



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-2

May 27, 2011

**Petition of the State 911 Department for Approval of Fiscal Year 2012 Incentive Grant
Regional Emergency Communications Center Category Amount; State 911 Department
Emergency Medical Dispatch Grant; and Fiscal Year 2011 Expenditures**

ORDER

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I. INTRODUCTION AND PROCEDURAL HISTORY

On February 28, 2011, the State 911 Department (“911 Department”) petitioned the Department of Telecommunications and Cable (“DTC”) for approval of the following: an increase, by ten percent or more, of the Incentive Grant regional emergency communication center (“RECC”) category amount for fiscal year (“FY”) 2012; the creation of a new grant entitled the State 911 Department Emergency Medical Dispatch Grant (“EMD Grant”); and an increase of more than ten percent of the projected total expenditures for FY 2011. *See* Petition of the State 911 Dep’t for Approval of Fiscal Year 2012 Incentive Grant Reg’l Emergency Commc’ns Ctr. Category Amount; State 911 Dep’t Emergency Med. Dispatch Grant; and Fiscal Year 2011 Expenditures at 1 (“Petition”). Under the 2008 Act, the DTC has ninety days to review and issue a final decision on the 911 Department petition before these requests are presumed to be approved. *See* G. L. c. 6A, §§ 18B(i)(4), 18H(c).

The DTC issued its first set of Information Requests to the 911 Department on March 11, 2011. The Attorney General intervened as of right on March 18, 2011. *See* G. L. c. 12, § 11E. The 911 Department filed its responses on March 21, 2011. The DTC issued a second round of Information Requests on March 29, 2011. The 911 Department filed its responses to the DTC’s second round of Information Requests on April 8, 2011. On April 13, 2011, the DTC conducted an evidentiary hearing. On April 20, 2011, the 911 Department responded to three Record Requests issued by the DTC at the evidentiary hearing.

In this *Order*, the DTC approves the FY 2012 RECC Incentive Grant amount, the creation of the EMD Grant, and the 911 Department’s FY 2011 projected expenditures. The DTC additionally concludes that the Petition satisfies the requirement that the 911 Department

report annually on the condition of the Enhanced 911¹ Fund (“Fund”), and offers further comment on the condition of the Fund.²

II. ANALYSIS AND FINDINGS

The DTC approves the increase in FY 2012 Incentive Grant RECC category amount; the creation of the EMD Grant; and the increase in FY 2011 911 Department expenditures, based on the following analysis and findings.

When reviewing 911 Department petitions, the DTC looks to whether the allocation or expenditure at issue will be prudently incurred. *See Petition of the State 911 Dep’t for Approval of the Fiscal Year 2011 Dev. Grant Amount, and Fiscal Year 2010 Expenditures*, D.T.C. 10-1, *Order* at 5-6 (Apr. 5, 2010) (“2010 Order”) (approving an increase in the FY 2011 Development Grant Allocation under G. L. c. 6A, § 18B(i)(5)). When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *See Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, and amplified handsets at pay tels.*, D.T.C. 07-7, *Order* at 7, 9, 19 (Feb. 8, 2008)

¹ Enhanced 911 (“E911”) services provide residents of the Commonwealth with the ability to reach emergency services by dialing the digits “9-1-1”, and are provisioned pursuant to G. L. c. 6A, §§ 18A – 18I and G. L. c. 166, §§ 14A, 15E. E911 is distinguished from traditional 911 services in that E911 provides responders with both the telephone number used to place the 911 call, and information detailing the geographic origin of the call. *See* G. L. c. 6A, § 18A.

² The 911 Department has requested that the DTC consider its petition in this matter as satisfying the requirement under G. L. c. 6A, § 18H(b) that it report annually on the financial condition of the Enhanced 911 Fund to the DTC. *See* Petition at n.1. The DTC grants the 911 Department’s request and finds that the Petition satisfies the requirements of G. L. c. 6A, § 18H(b).

(“2008 E911 Surcharge Order”). The DTC will not simply substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department’s statutory obligations, and has previously held that the 911 Department has the authority to determine which categories of equipment, training, and support expenditures it will submit to the DTC for approval. *See Investigation by the Dep’t of Telecomms. and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, and amplified handsets at pay tels.*, D.T.E. 03-63-Phase I, *Order* at 16 (July 14, 2003) (finding that while the State Emergency Telecommunications Board (“SETB”)³ must “support the reasonableness of its proposed expenditures, the [Department of Telecommunications and Energy (“DTE”)]⁴ lacks the jurisdiction to tell the SETB what categories of expenditure it is required to propose”). However, even though the 911 Department may make a determination that a certain expense is needed, the DTC has held that all expenses must still be prudently incurred. *See 2008 E911 Surcharge Order* at 8. Specifically, expenses are deemed prudent if they are necessary for the funding of the 911 Department’s provision of E911 services and disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. *See 2008 E911 Surcharge Order* at 9; *Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for*

³ SETB was the predecessor agency to the 911 Department, and was dissolved on February 1, 2009. Acts of 2008, c. 223.

⁴ The DTE, the DTC’s predecessor agency, was dissolved on April 11, 2007. *See* Acts of 2007, c. 19.

people with disabilities, and amplified handsets at pay tels., D.T.C. 07-7, Interim Order at 7 (Nov. 30, 2007) (“2007 Interim E911 Surcharge Order”); Investigation by the Dep’t of Telecomms. and Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, and amplified handsets at payphones, D.T.E. 06-4, Order at 27-28, 35 (Dec. 1, 2006) (“2006 E911 Surcharge Order”).

As set forth in the *2010 Order*, the “DTC’s authority in relation to the 911 Department’s broad authority to determine the categories of expenditures which are required to fulfill its (*i.e.*, the 911 Department’s) statutory responsibilities could only be viewed as conflicting, or at a minimum, limited, and we note the difficulty of reconciling the competing interests of ensuring modern, robust E911 services and disability access programs, and maintaining a stable surcharge.” *2010 Order* at 7 (citing G. L. c. 6A, § 18B (authorizing the 911 Department to disburse funds from the Fund for prudently-incurred expenses associated with the provisioning of E911 and disability access services)). Accordingly, it is important to clarify our view of the relationship between the seemingly conflicting authority of the 911 Department and the DTC under G. L. c. 6A, §§18A-18I and G. L. c. 166, §§ 14A, 15E. *Id.* at 7-8. The DTC has stated in the past that the 911 Department has authority to determine what is necessary for the provisioning of E911 service, and under the 2008 Act, the DTC similarly defers such judgment as it applies to disability access programs. *See 2010 Order* at 8; *2008 E911 Surcharge Order* at 7. But “necessity” cannot be viewed in a vacuum. *2010 Order* at 8. It must be viewed in relation to cost, and to that extent, the DTC’s mandate under the 2008 Act is to maintain a reasonable, stable surcharge, in order to protect the interests of the payers of these services—

telecommunications customers—and to serve as a counterweight to the 911 Department’s authority. *See* G. L. c. 6A, §§ 18A(b), (c). In this sense, the DTC plays a very important role in overseeing the costs of provisioning 911 services and disability access programs. *See id.* That role is limited to determining whether expenses are prudently incurred. *2010 Order* at 8.

A. FY 2012 INCENTIVE GRANT RECC CATEGORY ALLOCATION

The 911 Department seeks to increase the FY 2012 Incentive Grant RECC category funding amount from two percent of the surcharge revenues from the previous fiscal year, to four percent of the total surcharge revenues from the previous fiscal year. Petition at 4. The 911 Department states that this adjustment “will allow the [911] Department to meet its statutory obligations to maximize effective enhanced 911 services and regional interoperability and will further the [911] Department’s goals of increased regionalization which will, in turn, lead to a more efficient and effective use of resources and improve public safety.” *Id.* at 5-6. The DTC finds that an increase in the FY 2012 Incentive Grant RECC category amount to four percent of the total surcharge revenues of the previous fiscal year is a prudently incurred expense, and accordingly approves this increase.

General Laws chapter 6A, section 18B(i)(4) establishes a regional public safety answering point (“PSAP”) and RECC incentive grant to “provide regional PSAPs and [RECCs] with funds in addition to amounts allocated as part of the PSAP and [RECC] support grant” for reimbursement of allowable expenses, as specified in the PSAP and RECC support grant.⁵ The

⁵ Support grant funds are “disbursed according to a formula that weighs both population served and 911 call volume.” G. L. c. 6A, § 18B(2). This grant reimburses: “primary, regional and regional secondary PSAPs and [RECCs] for allowable expenses related to enhanced 911 telecommunications personnel costs, and the acquisition and maintenance of heat, ventilation and air-conditioning equipment and other environmental control equipment, computer-aided dispatch systems, console furniture, dispatcher chairs, radio consoles, and fire alarm receipt and alert equipment associated with providing enhanced 911 service; regional PSAPs and [RECCs] for allowable expenses related to the acquisition and maintenance of public safety radio

statute sets funding for the RECC category of the Incentive Grant at a level of two percent of the total surcharge revenues from the previous fiscal year. G. L. c. 6A, § 18B(i)(4)(iv). The State 911 Commission may adjust this percentage “to ensure a proper allocation of incentive funds as more regional PSAPs and regional emergency communication centers are added.”⁶ G. L. c. 6A, § 18B(i)(4). However, “adjustments that increase the initial total allocation of the incentive grant by [ten percent] or more shall be approved by the department of telecommunications and cable, upon the petition of the [911 Department].” *Id.* As the proposed increase in the FY 2012 Incentive Grant RECC category amount will result in an increase of over ten percent in the overall Incentive Grant allocation, the DTC must approve this adjustment. *See* G. L. c. 6A, § 18B(i)(4); Petition at 4.

The 911 Department proposes to increase the Incentive Grant RECC category amount from two percent to four percent of the total surcharge revenues for the previous fiscal year to “ensure a proper allocation of incentive funds due to the expected addition of RECCs to the Incentive Grant RECC category.” Petition at 4. Of the total projected amount, the 911 Department anticipates needing 2.6 percent of total surcharge revenues to fund existing RECCs and the new RECC scheduled to come into service in FY 2012. Exh. D.T.C. 2-9. The 911 Department states that this increase will maintain the existing RECCs at their current level of funding, as well as support the addition of the South Shore Regional Emergency Communication Center, expected to become active in July 2011. Petition at 5. The 911 Department projects the

systems; regional secondary PSAPs for allowable expenses related to PSAP customer premises equipment maintenance; and primary, regional, and regional secondary PSAPs and [RECCs] for any other equipment and related maintenance associated with providing enhanced 911 service as approved by the department.” *Id.*

⁶ On February 3, 2011, the State 911 Commission voted unanimously to increase the FY 2012 Incentive Grant RECC category to four percent of the total surcharge revenues for the previous fiscal year. Petition at n.7.

remaining 1.4 percent will be required “to fund additional new RECCs or expansion to existing RECCs that may come on line during FY 2012.” Exh. D.T.C. 2-9. The 911 Department encourages increased RECC category funding as it is the “preferred incentive category.” *See* Exh. D.T.C. 1-13. According to the 911 Department, RECC category growth signals progress towards the 911 Department’s statutory goal of increased regionalization of E911 services. *See id.* The 911 Department further explains that “[m]ost, if not all of such regionalization projects, if completed, would become RECCs,” and therefore “this is the category that the [911] Department, with State 911 Commission and DTC approval, will need to adjust as new RECCs are added.” *Id.* Specifically, eight RECC projects have completed final feasibility studies, and “some of these projects with a few or all of their participating communities may come into service in FY 2012.” Petition at 5. Additionally, the existing RECC encompassing Rutland, Oakham, and Hubbardston may be adding a new community in FY 2012. *Id.*

Based on its review of the filings and testimony by the 911 Department, as summarized above, the DTC finds that the 911 Department has shown that the requested increase is necessary to maintain support for existing RECCs, and to ensure sufficient funding is available for additional RECCs or the expansion of existing RECCs in FY 2012. *See 2010 Order* at 6-7. Having concluded that the 911 Department can maintain the current surcharge level for FY 2011, notwithstanding this necessary, additional expense, the DTC further finds that this increase in the Incentive Grant RECC category amount is prudently incurred. *See 2010 Order* at 6-7, 10; *2008 E911 Surcharge Order* at 8; *infra* Part D. Accordingly, the DTC approves the increase in the Incentive Grant RECC category amount to four percent of the total surcharge revenues for the previous fiscal year.

B. CREATION OF EMD GRANT

The 911 Department seeks approval of a new grant, the EMD Grant, to fund compliance with the requirements set forth in its proposed emergency medical dispatch regulations (“EMD Regulations”). Petition at 6-7. The 911 Department states that the EMD Grant is necessary because “existing grant funding mechanisms would not allow the [911] Department to fully reimburse PSAPs and RECCs for expenses associated with compliance with the EMD Regulations.” *Id.* at 8. The DTC finds that the EMD Grant is a prudently incurred expense, and accordingly approves this grant.

Under G. L. c. 6A, § 18B(g), the 911 Department must establish “certification requirements for enhanced 911 telecommunicators including, but not limited to, emergency medical dispatch and quality assurance of emergency medical dispatch programs; standards requiring PSAPs to have certified emergency medical dispatch personnel or to provide emergency medical dispatch through a certified emergency medical dispatch resource....” Pursuant thereto the 911 Department developed proposed EMD Regulations establishing certification requirements for E911 telecommunicators; establish 911 call handling procedures; and govern emergency medical dispatch (“EMD”). Petition at 7. The 911 Department anticipates its proposed EMD Regulations will go into effect on July 1, 2011. *Id.* The EMD Regulations require that PSAPs provide EMD services via certified EMD personnel or through a certified EMD resource, require the use of EMD protocol on all requests for medical assistance, and set forth EMD certification requirements. *Id.* Additionally, the EMD Regulations establish certification and continuing education requirements for E911 telecommunicators. *Id.* at 8. The 911 Department states that it will fund the requirements in the EMD Regulations using both the

existing Training Grant and the proposed EMD Grant. Exh. D.T.C. 1-28(b).⁷

General Laws chapter 6A, section 18B(g) charges the 911 Department with establishing “guidelines for developing and administering any grant authorized in subsection (i), or any other grant associated with providing enhanced 911 service in the commonwealth...including but not limited to, provisions requiring municipalities to provide documentation of expenditures.” Any such grant must be approved by the State 911 Commission⁸ and the DTC. G. L. c. 6A, § 18B(g).

The 911 Department proposes to create the EMD Grant with a primary purpose of reimbursing “primary PSAPs, regional PSAPs, regional secondary PSAPs, RECCs, and wireless state police PSAPs for allowable expenses relating to [EMD] services provided by a certified EMD resource.” Petition at 6. Specifically, the 911 Department found that the EMD Grant was necessary because the existing grant programs would not permit reimbursement for PSAPs and RECCs that opt to provide EMD through a third party resource. *Id.* at 8. The EMD Grant will also provide “supplemental funding, not otherwise funded under the State 911 Department Training Grant, for primary PSAPs, regional PSAPs, regional secondary PSAPs, and RECCs to meet minimum training and certification requirements for enhanced 911 telecommunicators and minimum requirements governing EMD established by the State 911 Department.” *Id.* at 6.

The 911 Department allocated funds under both the Training Grant and proposed EMD Grant, and states that the “total budgeted amount...under the Training Grant and EMD Grant

⁷ The 911 Department increased the Training Grant allocation by two percent, and states that that increase will be “used primarily to satisfy the minimum requirements governing EMD.” Exh. D.T.C. 2-5(a). In several instances, PSAPs must first exhaust their Training Grant funds before they are eligible for EMD Grant funding. See Exh. D.T.C. 1-26; Transcript of Public Hearing at 26-29, *Petition of the State 911 Dep’t for Approval of Fiscal Year 2012 Incentive Grant Reg’l Emergency Commc’ns Ctr. Category Amount; State 911 Dep’t Emergency Med. Dispatch Grant; and Fiscal Year 2011 Expenditures*, D.T.C. 11-2 (Apr. 13, 2011) (“Tr.”).

⁸ The State 911 Commission voted unanimously to approve the EMD grant on February 3, 2011. Petition at n.11.

should be sufficient in FY 2012 to meet the minimum requirements contained in the EMD Regulations.” Exh. D.T.C. 2-8(b). The 911 Department has allocated three percent of the total surcharge revenues for the previous fiscal year⁹ to the EMD Grant. Petition at 8. The 911 Department notes that this allocation is for budgeting purposes only and that “to the extent that the amount of requested funding exceeds [three] percent of the total surcharge revenues of the previous fiscal year, the [911] Department will draw funds from the ending balance if necessary to allow PSAPs/RECCs to meet the minimum requirements set forth in the EMD Regulations.” *Id.* at 8, 9. The 911 Department identifies a number of unknown factors in determining the funding needed to support the EMD requirements during this initial period, including: how many PSAPs and RECCs will provide EMD through certified EMD dispatchers; how many PSAPs and RECCs will use a certified EMD resource; and the amount of the fee charged by certified EMD resources. *Id.* at 8. The 911 Department conducted a survey of all Massachusetts PSAPs and RECCs regarding their current use of EMD programs and services,¹⁰ and will continue gathering information as a part of the EMD Grant documentation process to enable the 911 Department to better estimate the level of future grant funding needed to meet EMD requirements. *Id.* at 8-9. The 911 Department states that the funding requirements will likely become more stable and predictable after the first two years of implementation. Tr. at 36-37.

The 911 Department states that in order to “fully fund the legislative requirements, awards distributed from the EMD Grant will be disbursed on an as needed basis, with no stated

⁹ Given the degree of uncertainty in the funding level required, the 911 Department bases its three percent allocation on an assumption that fifty percent of PSAPs will use a certified EMD resource at approximately \$5,000 per PSAP position. Petition at 8.

¹⁰ The 911 Department surveyed the 262 PSAPs in Massachusetts and received responses from 246 of them. The responses indicated that approximately 75 percent are not providing EMD. However, the 25 percent of responding PSAPs that indicated they already provide EMD include some of the largest PSAPs. Exh. D.T.C. 1-25.

percentage amount reflected in the grant guidelines for the EMD Grant, with no minimum award.” Petition at 8. The 911 Department submitted a draft of the FY 2012 State 911 Department Training Grant and Emergency Medical Dispatch Grant Guidelines and Application Package, which describes the process for awarding and disbursing funding, with its Petition. *Id.* at 8, Exhibit D.

The DTC finds that the EMD Grant is necessary for the 911 Department to meet its statutory obligations regarding EMD under G. L. c. 6A, § 18B(g) and to “allow the [911] Department to fully reimburse PSAPs and RECCs for expenses associated with compliance with the EMD Regulations.”¹¹ *See 2010 Order* at 6 (recognizing the authority of the 911 Department to determine what is reasonably required to perform its statutory obligations). Additionally, the DTC recognizes the importance of ensuring adequate funding for compliance with the EMD Regulations during the initial compliance period. The DTC determines that the 911 Department can maintain the current surcharge level for FY 2011, notwithstanding this additional expense budgeted at three percent of the total surcharge revenues of the previous fiscal year. *See 2010 Order* at 7; *infra* Part D. Additionally, the DTC finds that the ending FY 2010 Fund balance of \$82,432,226 is sufficient to support an additional allocation to the EMD Grant, if necessary, to allow PSAPs and RECCs to meet the minimum requirements set forth in the EMD Regulations, without resulting in an increase in the surcharge level for FY 2011. *See 2010 Order* at 10; *2008 E911 Surcharge Order* at 8; *infra* Part D. Accordingly, the DTC approves the EMD Grant as proposed.

The DTC notes, however, that the other grants administered by the 911 Department are,

¹¹ Petition at 8.

with one exception,¹² subject to statutory funding levels, and all grants require DTC approval for increases over prescribed percentages. *See* G. L. c. 6A, § 18B(i)(1) (allocating five percent of the total surcharge revenues of the fiscal year to the Training Grant, and requiring DTC approval for any increase to 7.5 percent or above, and prohibiting a decrease to below 3.75 percent); G. L. c. 6A, § 18B(i)(2) (allocating 25 percent of the total surcharge revenues of the previous fiscal year to the Support Grant, and requiring DTC approval for any increase to 31.25 percent or above, and prohibiting a decrease to below 18.75 percent); G. L. c. 6A, § 18B(i)(3) (allocating four percent of the total surcharge revenues of the previous fiscal year to the Wireless State Police PSAP grant, and requiring DTC approval for any increase to six percent or above, and prohibiting a decrease to below two percent); G. L. c. 6A, § 18B(i)(4) (allocating set percentages of the total surcharge revenues of the previous fiscal year to each of the four categories of the Incentive Grant, and requiring DTC approval for any increase in the total initial allocation of the Incentive Grant by ten percent or more). Consistent with this statutory framework, the DTC finds that an appropriate funding level should ultimately be established for the EMD Grant.

C. 911 DEPARTMENT FY 2011 EXPENDITURES

The 911 Department reports surcharge revenues of \$69,490,800 and requests DTC approval of projected expenditures of \$97,504,517 for FY 2011. *See* Petition at Exhibit E. As actual reported expenditures for FY 2010 were \$55,659,210, the 911 Department's FY 2011 request represents an increase of 75 percent from the previous fiscal year.¹³ *See id.* at 10. The

¹² G. L. c. 6A, § 18B(i)(5) (charging the 911 Department with determining the initial funding of the Development Grant, and requiring DTC approval for any increase by ten percent or more over the initial amount).

¹³ The initial projected expenditures for FY 2011 were \$81,353,586, which accounted for a less than two percent increase over the FY 2010 projected expenditures of \$80,226,137. However, actual FY 2010 expenditures were \$25.5 million lower than projected, and many FY 2010 expected expenditures were

911 Department is required to seek the DTC's approval for projected total expenditures that exceed the total expenditures of the previous year by ten percent or more. G. L. c. 6A, § 18H(c). As discussed above, the DTC reviews the reasonableness of such requests by inquiring into whether these expenses are, or will be, prudently incurred. *See supra* pp. 2-5. To determine whether these expenses are prudently incurred, the DTC first assesses the amount of revenue collected via the surcharge, and then evaluates the prudence of the expenses incurred by the 911 Department. *See 2008 E911 Surcharge Order* at 8-9. Applying this standard as discussed in detail below, the DTC concludes that the 911 Department's projected expenditures are, or will be, prudently incurred.

(1) Analysis of Surcharge Revenues

Fund revenues are generated from a surcharge "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system." G. L. c. 6A, § 18H(a). This surcharge is the principal source of E911 and disability access funding in Massachusetts.¹⁴ *2010 Order* at 11. The Fund's net revenue is derived by multiplying the surcharge by the number of access lines and subtracting one percent for administrative fees and two percent for uncollectible revenue. *Id.* The 911 Department's revenue projections for FY 2011 rely on three assumptions: (1) a 0.32 percent interest rate; (2) accurate subscriber counts; and (3) a two percent uncollectable revenue rate. *See* Exh. D.T.C. 2-

rolled into FY 2011. This is what accounts for the dramatic difference between FY 2010 actual expenditures and FY 2011 projected expenditures. *See* Petition at 10.

¹⁴ Portions of E911 and disability access programs receive additional matching funds from federal grant programs. Petition at n.19.

2; Exh. D.T.C. 1-18. The reasonableness of each assumption is examined below, along with a discussion of surcharge revenues from prepaid wireless subscribers.

(a) Interest Rate

The 911 Department earns interest on the Fund by investing a portion of the total fund balance. The interest earned each month is then reinvested, thereby increasing the invested funds. Exh. D.T.C. 2-2. The 911 Department projects the interest earned on the invested funds in FY 2011 to be \$155,580, using a 0.32 percent interest rate.¹⁵ See Petition at Exhibit E. The Fund is managed by the State Treasurer. See G. L. c. 29, § 23 (charging the state treasurer with managing “all cash, funds, or investments under the control or jurisdiction of any state agency”). As of March 31, 2011, the Office of the State Treasurer reports the average interest rate for the Massachusetts Municipal Depository Trust for 2011 at 0.32 percent. Exh. D.T.C. 2-2. Therefore, the DTC finds that 0.32 percent is a reasonable assumption for purposes of projecting interest earned on the invested funds for FY 2011.

(b) Access Line Counts

In the *2010 Order*, the DTC noted that “it would be prudent for the 911 Department to closely monitor the changes in subscriber counts for each type of access line contributing to the Fund to reflect the realities of evolving competition in the voice market.” *2010 Order* at 13. The DTC recognizes that the 911 Department tracks subscriber counts by service provider and by access line type on a monthly basis. See Exh. D.T.C. 1-18. The DTC believes that the ongoing collection of this data will facilitate surcharge revenue projections going forward. See *2010*

¹⁵ Interest earned on invested funds was not initially included in Exhibits A, E, and F to the Petition. The 911 Department made the necessary changes and re-submitted these exhibits. As a result, the estimated fund balance as of the end of FY 2015 increased by \$779,389. See Petition at Exhibit F.

Order at 13 (noting that monitoring the changes in subscriber counts for each type of access line would allow analysis of the evolving voice market).

In calculating revenue, the 911 Department multiplies the average number of monthly subscribers by the surcharge amount, thereby producing the projected monthly revenue.¹⁶ This averaged monthly revenue is then reduced by three percent to account for a carrier administrative fee (one percent) and uncollectible revenue (two percent). Exh. D.T.C. 1-18 (b). The adjusted monthly revenue is then multiplied by twelve to get the annual projected revenue for the fiscal year. *Id.* The DTC is satisfied with the 911 Department's tracking of subscriber counts, and believes that this is a reasonable method of calculating the projected revenue for FY 2011.

(c) Uncollectable Revenue

The 911 Department employs a two percent uncollectable revenue rate to reduce the total fund revenue projections. Exh. D.T.C. 1-18. DTC regulations permit a reduction in total surcharge revenues to reflect uncollected revenues. *See* 220 C.M.R. § 16.03(8) (telecommunications companies are only "obligated to remit the actual amount collected from subscribers"). The DTC finds that the 911 Department's use of a two percent uncollectable revenue rate is reasonable, as discussed below.

In 2008 the DTC approved a two percent uncollectable revenue rate, based upon Verizon's reported uncollectable revenue rate of 2.1 percent across residential and business wireline accounts. *2008 E911 Surcharge Order* at 12. The DTC found that applying the two percent uncollectable rate to reduce the 911 Department's net revenue was "appropriate because Verizon is the dominant local exchange carrier in the Commonwealth." *Id.*

¹⁶ The 911 Department tracks subscriber count by service provider on a monthly basis. Exh. D.T.C. 1-18(a). This subscriber count is averaged to determine the overall number of subscribers per month per carrier type. *Id.*

However, in the *2010 Order*, the DTC noted that due to the increase in non-wireline access lines subject to the surcharge (wireline access lines now constitute less than forty percent of the total lines subject to the surcharge), it would be appropriate for the 911 Department to adjust its methodology to account for uncollectable revenue rates by access line type when calculating uncollectable revenues in the future. *2010 Order* at 14. The 911 Department has indicated that it does not receive sufficient data from service providers for this suggested analysis by carrier type. *See* Exh. D.T.C. 1-19. The DTC agrees that, at present, there is insufficient data to set uncollectable revenue rates by access line type. *See* Exh. D.T.C. 1-19; Tr. at 9 (testifying that only a small percentage of carriers report an uncollectible dollar amount). According to the limited data available to the 911 Department for FY 2011, the uncollectible rate for wireline carriers was 1.6 percent, while the uncollectible rate for VoIP carriers was 4.2 percent. D.T.C. R.R. 2. Although the data presented is not sufficient to determine a meaningful estimate for what the uncollectible rate should be, it does indicate the possibility of a disparity of uncollectible rates between carrier types. *See id.*

Under G. L. c. 6A, § 18(H)(f), “[e]ach communication service provider *shall* report to the department on a monthly basis...the total uncollected surcharge revenues from subscribers or end users during the preceding month.” (emphasis added). While the DTC agrees with the 911 Department that “carriers are required to remit only the amount that is collected,”¹⁷ the DTC believes that carriers have a statutory obligation under G. L. c. 6A, § 18(H)(f) to report, on a monthly basis, their total uncollected surcharge revenues. The DTC further believes that the collection of this data is necessary to set accurate uncollectible rates going forward.

¹⁷ D.T.C. R.R. 3 (citing G. L. c. 6A, § 18(H)(a) (providing that “the communication service provider shall not be financially liable for surcharges billed on behalf of the commonwealth but not collected from subscribers or end users”).

Accordingly, the DTC recommends that the 911 Department take steps, including amending its monthly reporting form, as necessary, to ensure that all service providers are aware of, and in compliance with, this requirement. Accordingly, until such a time as sufficient data regarding uncollectible surcharge revenues rates is available to the 911 Department, the DTC approves the continued use of a two percent uncollectible rate.

(d) Prepaid Wireless Revenues

Under G. L. c. 6A, § 18H(a), the 911 Department promulgated regulations for the remittance and collection of the surcharge for prepaid wireless service, which went into effect on July 1, 2009. 560 C.M.R. § 3.02. In the *2010 Order*, the DTC noted that at that time, only four prepaid wireless providers were submitting the surcharge and reporting their subscribership monthly as required under the regulations. *2010 Order* at 14. The 911 Department has continued its efforts to ensure that all prepaid wireless providers in Massachusetts comply with the surcharge regulations. *See* Exh. D.T.C. 1-20. In May 2010, the 911 Department mailed registered letters to 75 service providers, describing the remittance requirements for the payment of the surcharge for prepaid wireless subscribers. *Id.* Additionally, prepaid service providers who were remitting as wireless carriers were instructed to record themselves as a prepaid wireless provider.¹⁸ *Id.* The 911 Department received relatively few responses to this outreach effort. *See* Exh. D.T.C. 2-7. The DTC recognizes that a bill has been introduced to amend the 911 Department's statute specifically to require point-of-sale collection and remittance of the surcharge for prepaid wireless service. *See* H.B. 643, 187th Sess. (Mass. 2011); Exh. D.T.C. 1-22. Under a point-of-sale model, the retailers of prepaid wireless service, and not the prepaid

¹⁸ Service providers providing both prepaid and wireless service were instructed to file two remittance forms properly recording the subscriber count for each service. *See* Exh. D.T.C. 1-20

wireless service providers, would remit the surcharge to the 911 Department via the Massachusetts Department of Revenue, which will hopefully improve the remittance rates significantly. While results have been mixed, the DTC encourages the 911 Department to continue its outreach efforts to bring wireless providers into compliance with the regulations, while awaiting passage of the above legislation.

(2) Analysis of 911 Department Expenditures

The DTC now analyzes the 911 Department expenditures, and determines that the projected expenses are necessary to the provisioning of E911 services and disability access programs, and are, or will be, prudently incurred for FY 2011. The 911 Department's projected expenses for FY 2011 are broken down into three major cost categories: (a) Administration; (b) E911; and (c) Disability Access Programs. *See* Petition at Exhibit E. The DTC analyzes the prudence of expenditures in each cost category in greater detail below.

(a) Administration

The DTC determines that the 911 Department's projected administration expenses of \$7,486,130 for FY 2011 are, or will be prudently incurred. The 911 Department's administration expenses include salary costs, agency expenses, and capital project costs. *See* Petition at Exhibit E.

Salary costs for FY 2011 are projected at approximately \$3,596,608, compared to the FY 2010 actual costs of \$3,164,296. The 911 Department explains that the increase in salary costs is partly due to the addition of an employee added in FY 2011 to support PSAP regionalization projects and wireless direct efforts whereby willing PSAPs would receive wireless calls directly rather than as a transfer from one of the three wireless State Police PSAPs located in the Commonwealth. *Id.* at 10. Moreover, the projections for salary expenses reflect contractual step

increases and cost of living requirements negotiated by the National Association of Government Employees and the Commonwealth. *Id.* The DTC finds that the increase in salary expenses is due to the 911 Department's fulfillment of its statutory responsibilities and contractual employment obligations arising from those responsibilities. The projected FY 2011 salary expenses of \$3,596,608 are therefore necessary to the provisioning of E911 and disability access programs, and are, or will be, prudently incurred.

Agency expense, the second item within the administration expenses category, is comprised of: (1) Employee Reimbursements; (2) Administrative Expenses; (3) Operational Supplies; (4) Utilities/Space Rental; (5) Consultant Services; (6) Operational Services; (7) Equipment Purchase; (8) Lease, Maintenance, Repair Services; (9) Building Maintenance, Repairs; (10) IT services; and (11) PY Deficiencies.¹⁹ *See* Petition at Exhibit E. The projected total agency expense category for FY 2011 is \$713,386, an eleven percent increase from the DTC approved FY 2010 projection of \$640,743. *See 2010 Order.* The DTC's review of the subcategories within the agency expense class reveals that over half of the increase from the FY 2010 projection comes from spending on consultants to advise the 911 Department on Next Generation 911 ("NG 911")²⁰ implementation. *See* Petition at Exhibit E. Moreover, for FY 2011 the 911 Department has adjusted projections for individual agency expense subcategories to more accurately reflect the level of actual spending incurred in FY 2010. *See id.* Therefore, because the increase in FY 2011 projected spending is mostly attributable to consulting fees

¹⁹ A line item within the agency expenses category called "PY Deficiencies" captures prior year deficiency payments to vendors. The category records payments to vendors for goods and/or services delivered in the prior fiscal year that were not paid during that fiscal year's cycle. Typically, this situation arises from a vendor not having invoiced the Department until after the close of accounts payable. Exh. D.T.C. 1-3.

²⁰ "Next Generation 911" is an enhanced 911 system that incorporates the handling of all 911 calls and messages, including those using IP-enabled services or other advanced communication technologies in the infrastructure of the 911 system itself. *See* G. L. c. 6A, § 18A.

which are necessary to meet the 911 Department's NG 911 goals, and because the FY 2011 projections more accurately reflect the actual FY 2010 expenditure levels within the administration expense subcategories, the DTC finds that the 911 Department agency expenses for FY 2011 are, or will be, prudently incurred.

Capital projects, the final item within the administration expenses category, is projected to be \$3,176,136 for FY 2011. This is a significant increase over the \$1,411,567 incurred in FY 2010. These expenses represent the continuation of funding for capital projects, including: replacing the roofs of the three buildings on the Taunton property, which are in a general state of disrepair with multiple points of leakage (\$1.2 million); an onsite generator to power the buildings in the event of a power outage (\$120,000); replacement of an antiquated fire alarm system (\$200,000); replacement of an air conditioner unit (\$75,000); renovation of space for a training center to be co-located with the Massachusetts State Police in Maynard (\$400,000); a matching amount of a Federal Grant that the 911 Department applied for and was awarded that will be used to assist all PSAPs in the Commonwealth to migrate to an internet protocol-enabled emergency network (\$1.05 million); and furnishings for the new Maynard training facility (\$100,000). *See* Petition at 11. The 911 Department anticipates completing these projects in FY 2011, and indicates that no new capital projects are planned for FY 2012. Exh. D.T.C. 1-2. In the event that these projects are not completed by the end of FY 2011, it is the 911 Department's intent to roll this funding from FY 2011 into FY 2012 for the purpose of completing these scheduled projects. *See id.* However, no new capital expenditure funding is anticipated for FY 2012. *See id.* The DTC determines that the 911 Department has submitted sufficient evidence to

demonstrate that its FY 2011 capital expenses are necessary to the provisioning of E911 and disability access programs, and therefore are, or will be, prudently incurred.

(b) Enhanced 911

The second category of expenses is E911 expenses, which the 911 Department projects to be \$26,937,420 for FY 2011, approximately 25 percent higher than the actual FY 2010 expenditures of \$21,480,543. *See* Petition at Exhibit E. E911 expenses include: (1) Map Data; (2) Enhanced 911 Support expenses; and (3) NG 911 project expenses. *See id.* As discussed below, the DTC determines that the 911 Department's projected E911 expenses of \$26,937,420 for FY 2011 are, or will be prudently incurred.

The first item within the E911 category of expenses is Map Data. The 911 Department has an interdepartmental service agreement with MassGIS (a department within the Commonwealth's Information Technology Division) in which MassGIS provides updated, synchronized mapping data and information to the 911 Department for use by the PSAPs. *See id.* at 13. The 911 Department projects \$1,256,244 in Map Data expenses in FY 2011, an increase of approximately 173 percent over the \$460,717 spent on Map Data in FY 2010. *See id.* The 911 Department explains that this significantly increased expense reflects the additional dedicated MassGIS resources needed to support the 911 Department as it prepares for the implementation of NG 911. *See id.* The DTC finds that the increase in Map Data expense is necessary as an additional part of an ongoing project, and is therefore prudently incurred.

The second and largest item within the E911 category of expenses is E911 Support. For FY 2011, the 911 Department projects \$23,031,176 in E911 Support expenses, an increase of approximately 22 percent over FY 2010's expenses of \$18,806,171. *Id.* This amount is based on

a contract between the 911 Department and Verizon for network, database, and customer premises equipment, as well as maintenance services. *See* Petition at 13. Because the E911 Support expenses are contractual and necessary to fulfill the 911 Department's statutory obligations in provisioning E911 and disability access programs, the DTC determines that they are, or will be, prudently incurred.

The final item within the E911 category of expenses is the NG 911 project. The 911 Department has projected \$625,000 in NG911 expenses for FY 2011, all of which is for consultant expenses. *See id.* at Exhibit E. Through a RFR process, the 911 Department has entered into a contract with RCC Consultants to assist with the implementation of the NG911 project. *See id.* at 13. RCC will provide the 911 Department with analysis, planning, and project management support services; procurement support services; and transition and implementation support services. The DTC determines that the FY 2011 projected expenses for the NG911 project are necessary to provisioning E911 and disability access programs. Accordingly, the DTC finds that these expenses are, or will be, prudently incurred.

(c) Disability Access Programs

The third and final category of projected expenses is for Disability Access Programs, which include Telecommunication Relay Service ("TRS"), the Equipment Distribution Program ("EDP"), and Captioned Telephone Service ("CapTel"). For FY 2011, the 911 Department projects \$7,378,000 in Disability Access Programs expenses. *See* Petition at Exhibit E. Pursuant to G. L. c. 166, § 15E, local exchange carriers must provide relay services and specialized equipment distribution programs for disabled persons. Prudently incurred expenses associated with the provision of disability access programs are recovered through the surcharge. The DTC

finds that that expenses associated with these programs are, or will be, prudently incurred, as discussed below.

TRS provides individuals with hearing or speech impairments the ability to communicate using voice over wire or radio, in a manner functionally equivalent to a person without such impairments. *2010 Order* at 20. TRS is provided in the Commonwealth through a contract with Hamilton Relay Services. *See* Petition at 14. The projected \$3,750,000 in TRS expenses is based on this contract with Hamilton Relay Services and historical spending data. *See id.* The DTC determines that TRS service is necessary to the provision of E911 and disability access programs and is based on a DTC-approved contract for services. Therefore, the DTC finds that the FY 2011 TRS expenses are, or will be, prudently incurred.

The EDP provides Massachusetts residents with a permanent disability access to the telephone network in their homes.²¹ The 911 Department contracts with various equipment vendors to provide specialized customer premises equipment (“SCPE”) that is distributed by the EDP to persons with disabilities. *See* Petition at 14. The projected \$1,628,000 in EDP expenses is based on these contracts with SCPE vendors and historical spending data. *See id.* The DTC determines that the FY 2011 projected expenses for EDP service is necessary to the provision of E911 and disability access programs, and therefore are, or will be, prudently incurred.

CapTel is a relatively new service being offered to Massachusetts residents, pursuant to G. L. c. 166, §15. CapTel allows persons with a hearing disability, but who retain some residual hearing, to read captions of what a caller is saying while simultaneously listening to that caller.

²¹ Executive Office of Public Safety and Security, Massachusetts Equipment Distribution Program, http://www.mass.gov/?pageID=eopsterminal&L=3&L0=Home&L1=Public+Safety+Agencies&L2=Massachusetts+Equipment+Distribution+Program&sid=Eeops&b=terminalcontent&f=medp_Welcome&csid=Eeops (last visited May 25, 2011).

2010 Order at 21. For FY 2011, the 911 Department projects \$2,000,000 in CapTel expenses, a significant increase over the \$8,566 in actual expenses for FY 2010. *See* Petition at Exhibit E. This large discrepancy is due to the fact that CapTel is a newly offered service which began in August of 2010, during FY 2011. *See* Exh. D.T.C. 1-11. The \$8,566 actually incurred in FY 2010 was for consultant services prior to implementation of the CapTel service. *See id.* The DTC determines that the 911 Department's projected expenses are necessary to the provisioning of E911 and disability access programs, and necessary to meet its statutory obligations under G. L. c. 166, § 15, and thus are, or will be, prudently incurred.

D. STABILITY OF THE SURCHARGE

Having addressed both revenues and expenditures of the 911 Department, the DTC next looks to the condition of the Fund and the long-term prospects for stability of the surcharge. The Fund begins FY 2011 with a balance of \$82,432,226. *See* Petition at Exhibit E. Given the proposed FY 2011 expenditures and FY 2012 projection, the Fund balance appears reasonably capable of maintaining the surcharge in the near term. *See id.* at Exhibit F.

In the long term, the stability of the surcharge is less predictable (*see* Tr. at 44) because of uncertainty regarding the funding of the NG 911 project. *Id.* at 44-45. Making predictions of the surcharge's sustainability is further complicated by the fact that the 911 Department will not have reliable estimates of the cost to implement the NG 911 project until those costs are developed by the NG 911 consultant. *Id.* The DTC noted its concern over this issue in its *2010 Order*, and awaits the results of the NG 911 consultant's report to provide further clarity. *2010 Order* at 24. The DTC is encouraged by the 911 Department's commitment to maintenance of a stable surcharge by developing a realistic timeline for NG 911 implementation (*see id.* at 45);

making cuts, if necessary, to the regional development and various support grants to accommodate NG 911 spending (*see id.* at 45-46); adjusting grant funding to help provide some additional leeway to fund the NG 911 rollout; and extending the NG 911 implementation timeline to spread the cost over a longer period. The DTC believes that these and similar measures will be needed to maintain the surcharge in the long-run.

E. ORDER

Accordingly, after due consideration, the DTC:

APPROVES the FY 2012 Regional Emergency Communications Center Grant allocation;

APPROVES the creation of the Emergency Medical Dispatch Grant Amount, and its FY 2012 allocation;

APPROVES the 911 Department FY 2011 expenditures; and,

ACCEPTS the 911 Department petition as satisfying the requirements of G. L. c. 6A, § 18H(b) to file an annual report on the financial condition of the Enhanced 911 Fund.

By Order of the DTC,

/s/

Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.